

**Building the New Reclaimed Water WAC**  
**Proposed Draft Rule Language - work in progress (WIP)**  
**for Rule Advisory Committee Use Only (June 24, 2009)**

*Note:*

*The agencies continue working through the roles and responsibilities for various issues regarding noncompliance, enforcement and appeals related to this rule. This is particularly difficult to express for noncompliance or appealable actions that are not related to an issued permit. For now, the language in Part VII uses the term "lead agency" for all actions. Ecology and WDOH are seeking legal advice regarding the content and wording of the sections in this part of the rule.*

**PART VII NONCOMPLIANCE, ENFORCEMENT AND APPEALS**  
**(Version 1.0 TG 5/6/09 – 1.1 kcc 6-15-2009)**

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**Intent of Part VII**

1. Identify:
  - Agency authority to enforce requirements.
  - Right to appeal agency actions.
2. Specify :
  - Processes agency may use to enforce requirements.
  - Requirements to respond.

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**Proposed Sections: (section numbers may change)**

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|--------------|---|
| 173-219- 900 | Enforcement authority                                     |
| 173-219- 910 | Regulatory action for noncompliance (moved from Part III) |
| 173-219- 920 | Appeals.  |
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**Proposed Content:**

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**173-219-900 Enforcement authority.**

1. Any violation of this chapter or any permit issued under this chapter may be subject to the enforcement provisions of applicable laws including, but not limited to, chapters 43.21A, 43.70, 43.05, 90.46 and 90.48 RCW.
  2. Enforcement of a permit issued under this chapter shall be at the sole discretion of the lead agency issuing the permit.
  3. The enforcement of other laws, regulations, and ordinances is the responsibility of the agency with jurisdiction.
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**173-219-910 Regulatory action for noncompliance**

*Note: All content in this section was moved from Part III – 290. The language regarding modification, suspension or revocation of a permit was retained under Part III.*

1. Notification of Determination of Noncompliance. When, in the opinion of the lead agency, a person violates or creates a substantial potential to violate Ch 90.46 RCW, the lead agency must notify the person of its determination by registered mail. This determination does not constitute an appealable order or directive. Within thirty days from the receipt of notice of such determination, the person must file with the lead agency a full report stating what steps have been and are being taken to comply with the determination of the lead agency.
2. Issuance of Order or Directive. After the full report is filed or after the thirty days have elapsed, the lead agency may issue an order or directive as it deems appropriate under the circumstances. The agency must notify the person by registered mail, and must inform the person of the process for requesting an adjudicative hearing.
3. Compliance Schedules. The lead agency may establish schedules and conditions to achieve compliance with applicable requirements.
  - a. Schedules of compliance must set forth the shortest, reasonable period of time, to achieve the specified requirements.

**Comment [KCC1]:** Is it clear who is lead agency when there is no permit but there is a violation of 90.46?

- b. When schedules for compliance exceed one year, the schedule must be specified within a permit and provide interim requirements and the dates for their achievement with no more than one year between interim dates. If the time necessary for completion of the interim requirement (such as construction of a treatment facility) is more than one year and is not readily divided into stages of completion, interim dates must be specified for the submission of reports of progress toward completion of the interim requirement.
- c. Within fourteen days following each date to achieve compliance within the schedule, the person to whom the compliance schedule was issued must provide the lead agency with written notice of their compliance or noncompliance with the requirement.
- d. If the person fails or refuses to comply with an interim or final requirement in the compliance schedule, the noncompliance is considered a violation and the lead agency may modify or revoke the permit or take direct enforcement action.

4. Formal enforcement procedures.

- a. The lead agency, with the assistance of the attorney general, may sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any permits or conditions thereof without the necessity of a prior revocation of the permit.
- b. The lead agency may assess or, with the assistance of the attorney general, sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of (i) any reclaimed water standards and limitations (ii) any permit or term or condition thereof, (iii) any filing requirements, (iv) any duty to permit or carry out inspection, entry, or monitoring activities, or (v) any rules, regulations, or orders issued by the lead agency.
- c. The lead agency may request the prosecuting attorney to seek criminal sanctions for the violation by such persons of (i) any effluent standards and limitations or water quality standards, (ii) any permit or term or condition thereof, (iii) any filing requirements.
- d. The lead agency, with the assistance of the prosecuting attorney, may seek criminal sanctions against any person who knowingly makes any false statement, representation, or certification in any form or any notice or report required by the terms and conditions of any issued permit or knowingly renders inaccurate any

monitoring device or method required to be maintained by the lead agency.

**173-219-920 Appeals.**

Any person aggrieved by a decision of the agency that issued the permit made in accordance with provisions of this chapter may appeal that decision only as provided by law applicable to that agency including, but not limited to, chapters [43.21B](#) and [34.05](#) and 90.46 RCW. [\[ 2009 SB 5504-S\]](#)